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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,685	09/12/2003	Jose Vicente Barbera Alacreu	2644-0105P	7699

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EXAMINER

BUI, VY Q

ART UNIT	PAPER NUMBER
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3773

NOTIFICATION DATE	DELIVERY MODE
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06/14/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/660,685

Applicant(s)BARBERA ALACREU, JOSE
VICENTE**Examiner**

Vy Q. Bui

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-39 and 41 is/are pending in the application.
- 4a) Of the above claim(s) 40, 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22, 29, 33, 36, 38, 39 and 41 is/are rejected.
- 7) ☒ Claim(s) 23-32, 34, 35 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

The restriction requirements (7/30/2008 and 5/30/2008) have been withdrawn.

Therefore, the traversal of the restrictions is now moot.

Newly submitted independent claim 42 directed to an invention of a combination of elements that is independent or distinct from the invention originally claimed for the following reasons: new independent claim 42 introduced new combination of at least one connector / coupling, a rod, and a hook adapted to be fixed to the rod by attachment of an open tail of the hook directly to the rod (hook 115 having open tail 118 shown in F 26) as a new element, which has never been claimed and examined before.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, newly added independent claim 42 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Claim 40 dependent to newly added claim 42 is also withdrawn from consideration as being directed to a non-elected invention.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Brumfield et al-5,562,662.

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As to claim 22, Brumfield-'662 (F. 5 and 11, for example) discloses assembly (29, 131, 132) as at least one connector/coupling, rod 21, transversal traction device 111, vertebral fixation elements / device for vertebral fixation including lock nut 93, screw 33 with threaded tail 89 and threaded stem 88, wherein tail 89 (F 5) are threadedly adapted to be screwed to the at least one connector/coupling lock assembly (29, 131, 132) substantially as recited in the claim.

2. Claims 38-39, 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Brumfield et al-5,562,662.

As to claims 38-39 and 41, Brumfield-'662 (F. 11, for example) discloses assembly 29 as at least one connector/coupling, rod 21, laminar or pedicle hook 25 as a device for vertebral fixation element having threaded tail 123, wherein tail 123 (F 11) of hook 25 are threadedly adapted to be screwed to the at least one connector/coupling 29 substantially as recited in the claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29, 33 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 29, it is not clear what does the recitation "it" (last line of the claim) represent for? Clarification is required.

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As to claim 33, it is not clear what does the recitation "20 to 30%" (last line of the claim) represent for? Does this percentage numbers are the expansion percentage of the expansion screw relative to the diameter before expansion? Clarification is required.

As to claim 33, it is not clear what does the recitation "the expansion screw a longitudinal interiorhollow conduit" means? Clarification is required.

Allowable Subject Matter

Claims 23-28, 30-32, 34-35 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 22, 38-39 and 41 have been considered but are moot in view of the new ground(s) of rejection.

The restriction requirements (7/30/2008 and 5/30/2008) have been withdrawn. The traversal of the restrictions is now moot.

Conclusion

Independent claims 22 and 41 have been amended. Currently rejected claims 22, 38-39 and 41 were rejected before based on the same prior art of reference Brumfield et al-5,562,662.

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There is no new rejection over prior art in this "Final Office Action".

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692 and email address is vy.bui@uspto.gov . The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/

Primary Examiner, Art Unit 3773

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